

ESTTA Tracking number: **ESTTA560483**

Filing date: **09/20/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding.	92057694
Applicant	Defendant Sabertooth Motorcycles, LLC
Other Party	Plaintiff Arctic Cat Inc.
Have the parties held their discovery conference as required under Trademark Rules 2.120(a)(1) and (a)(2)?	No

Motion for Suspension in View of Civil Proceeding With Consent

The parties are engaged in a civil action which may have a bearing on this proceeding. Accordingly, Sabertooth Motorcycles, LLC hereby requests suspension of this proceeding pending a final determination of the civil action. Trademark Rule 2.117.

Sabertooth Motorcycles, LLC has secured the express consent of all other parties to this proceeding for the suspension and resetting of dates requested herein.

Sabertooth Motorcycles, LLC has provided an e-mail address herewith for itself and for the opposing party so that any order on this motion may be issued electronically by the Board.

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Facsimile or email (by agreement only) on this date.

Respectfully submitted,
/Ashley M. Bennett Ewald/
Ashley M. Bennett Ewald
ashley.ewald@gpmlaw.com, dean.eyler@gpmlaw.com
lfriedemann@fredlaw.com
09/20/2013

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

ARCTIC CAT INC.,
a Minnesota corporation,

Civil Action 13-cv-146 MJD/LIB

Plaintiff,

v.

SABERTOOTH MOTOR GROUP, LLC,
a Delaware limited liability company, and
SABERTOOTH MOTORCYCLES, LLC,
a Delaware limited liability company,

Defendants.

AMENDED COMPLAINT AND JURY DEMAND

Pursuant to Fed. R. Civ. P. 15(a)(1)(B), Arctic Cat Inc. (“Arctic Cat”) for its Amended Complaint against Defendants Sabertooth Motor Group, LLC and Sabertooth Motorcycles, LLC (collectively, “Sabertooth”) states and alleges as follows:

THE PARTIES

1. Arctic Cat is a Minnesota corporation having a principal place of business at 505 North Highway 169, Suite 1000, Plymouth MN 55441. Arctic Cat designs, engineers, manufactures and markets snowmobiles, all-terrain vehicles (ATVs) and Side by Sides under the ARCTIC CAT brand name, as well as related parts, garments and accessories. Arctic Cat markets its off-road products through a network of independent dealers located throughout the contiguous United States and Canada, and through distributors representing dealers in Alaska, Europe, the Middle East, Asia and other

international markets. The ARCTIC CAT brand name is among the most widely recognized and respected names in the snowmobile, ATV and Side by Side industry.

2. On information and belief, Sabertooth Motor Group, LLC is a Delaware limited liability company with its principal place of business located at 1040 Commerce Boulevard North, Sarasota, Florida, 34243.

3. On information and belief, Sabertooth Motorcycles, LLC is a Delaware limited liability company with its principal place of business located at 151 Bob Ledford Drive, Greer, South Carolina, 29651. On information and belief, Sabertooth Motorcycles, LLC is a wholly-owned subsidiary of Sabertooth Motor Group, LLC.

JURISDICTION AND VENUE

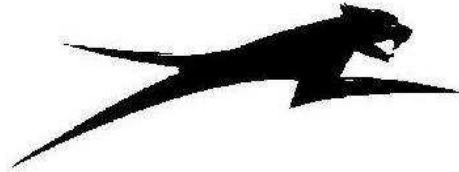
4. This is an action for a declaratory judgment and for trademark infringement, deceptive trade practices and unfair competition arising under the trademark laws of the United States, 15 U.S.C. § 1114 et seq., 28, U.S.C. §§ 2201 and 2202, Minn. Stat. § 325D.44, and the common law. Arctic Cat also seeks cancellation of several trademark registrations owned by Sabertooth. This Court has the authority to order cancellation of Sabertooth's registrations under 15. U.S.C. § 1119.

5. The Court has jurisdiction under 28 U.S.C. § 1338 (a) and (b), and 1367. Venue is proper under 28 U.S.C. § 1391(b) and (c).

6. The Court has personal jurisdiction over Sabertooth because Sabertooth alleges that it regularly conducts business in the State of Minnesota, and Sabertooth's website indicates that it manufactures products in the Minneapolis area.

ARCTIC CAT'S TRADEMARK RIGHTS

7. Arctic Cat owns the logo below (hereafter “Arctic Cat Logo”), which Arctic Cat uses prominently with off-road power sports vehicles, equipment and related accessories.





8. Arctic Cat has continuously used its Arctic Cat Logo in commerce since at least 2006 and on October 3, 2007, filed U.S. Serial Number 77/295,648 with the United States Patent and Trademark Office (“USPTO”) seeking federal registration of the Arctic Cat Logo.

9. The registration of the Arctic Cat Logo has been delayed due to Opposition No. 91,198,066 that was filed by an unrelated third-party on January 5, 2011 and is still pending before the Trademark Trial and Appeal Board. The pending opposition proceeding only concerns the registration of the Arctic Cat Logo for use with clothing. The registration of the Arctic Cat Logo for use with all-terrain vehicles and parts is not subject to any pending opposition proceedings and should issue in due course.

10. Arctic Cat also owns many other cat-themed trademarks, including the following trademarks registered with the USPTO:

Mark	Reg. No.	Reg. Date	Goods/Services
ARCTIC CAT	0,865,633	March 4, 1969	Snowmobiles and parts

Mark	Reg. No.	Reg. Date	Goods/Services
	2,293,113	Nov. 16, 1999	Four or six wheel all-terrain vehicles; motorized vehicles, namely, snowmobiles and parts, double or triple rider recreational jet boat, not including catamarans or catboats
ARCTIC CAT	2,178,018	Aug. 4, 1998	Snowmobiles and parts; four or six wheel all-terrain vehicles
BEARCAT	1,982,860	May 2, 1995	Motorized vehicles; namely snowmobiles and parts
THUNDERCAT	1,762,029	Mar. 30, 1993	Motorized vehicles; namely, snowmobiles and parts
THUNDERCAT	3,915,903	Feb. 8, 2011	All-terrain vehicles and parts
FIRECAT	2,779,647	Nov. 4, 2003	Snowmobiles and parts
COUGAR	1,661,623	Oct. 22, 1991	Snowmobiles and parts
CATMASTER	1,828,332	Mar. 29, 1994	Educational services; namely, conducting seminars, workshops, and classes in the field of snowmobile repair and service
EL TIGRE	1,643,544	May 7, 1991	Snowmobiles and parts
	1,789,501	Aug. 24, 1993	Clothing; namely, shirts, sweatshirts, T-shirts, jackets, pants and underwear

Mark	Reg. No.	Reg. Date	Goods/Services
PROWLER	1,548,214	July 18, 1989	Snowmobiles and parts
LYNX	1,097,348	July 25, 1978	Snowmobiles and parts
CHEETAH	1,010,674	May 13, 1975	Snowmobiles and parts
PANTHER	0,890,813	May 12, 1970	Snowmobiles and parts
JAG	1,166,432	Aug. 25, 1981	Snowmobiles and parts
TIGERSHARK	1,742,252	Dec. 22, 1992	Single or double rider recreational jet boat

11. Arctic Cat has been using cat-themed marks with off-road power sport vehicles since at least 1962, and has been using the Arctic Cat Logo since 2006. Arctic Cat began using the Arctic Cat Logo with ATVs in 2007 and has used the Arctic Cat Logo with Arctic Cat ATVS continuously since that time.

12. Arctic Cat has continuously and prominently used one or more cat-themed marks with all ATVs and Side by Sides manufactured and sold by Arctic Cat.

13. Because of its long-standing use of the ARCTIC CAT trademark, the Arctic Cat Logo, and other cat-themed trademarks, and the substantial investment Arctic Cat has made in its trademarks, people in the power sport vehicle industry associate the Arctic Cat Logo and other cat-themed trademarks with Arctic Cat.

INFRINGEMENT BY SABERTOOTH

14. Until recently, Sabertooth has been in the on-road motorcycle business. Off-road power sport vehicles, like those sold by Arctic Cat, and on-road motorcycles are distinct product categories.

15. Sabertooth recently began advertising an off-road ATV on its website, depicted below.



16. Sabertooth is promoting the ATV under the trademark MOUNTAIN LION with a logo that features a cat that resembles the head of the cat in the Arctic Cat Logo (hereafter, "MOUNTAIN LION Mark and Logo"). The below image shows close-up excerpts of the head of the Arctic Cat Logo on the left, and the MOUNTAIN LION Logo on the right.



17. On information and belief, the ATV Sabertooth is advertising and selling displays only the MOUNTAIN LION Mark and Logo, and does not display the SABERTOOTH trademark.

18. Sabertooth is improperly using the registered trademark symbol with the MOUNTAIN LION Mark and Logo even though the trademark is not registered with the USPTO.

19. Sabertooth owns U.S. Registration No. 3,576,038 for a cat head logo for use with on-road motorcycles only. Sabertooth's registration does not cover its use of the MOUNTAIN LION Mark and Logo with an off-road ATV.

20. Arctic Cat used the Arctic Cat Logo and other cat themed logos with ATVs, Side by Sides and other off-road power sport vehicles long before Sabertooth began using the MOUNTAIN LION Mark and Logo with an off-road vehicle.

21. Sabertooth's use of the MOUNTAIN LION Mark and Logo as described above is likely to cause confusion concerning the source, sponsorship or affiliation between Arctic Cat and Sabertooth.

22. Sabertooth's use of the MOUNTAIN LION Mark and Logo is without consent, permission or license by Arctic Cat.

23. Arctic Cat has been damaged by Sabertooth's actions in an amount to be proven at trial.

SABERTOOTH'S INFRINGEMENT ALLEGATIONS

24. On information and belief, Sabertooth is the owner of United States Trademark Registrations for the trademarks WILDCAT (U.S. Registration No. 3,490,382), SABERTOOTH MIDNIGHT WILDCAT (U.S. Registration No. 3,554,107), WILDCAT X (U.S. Registration No. 3,580,465), WILDCAT 427 (U.S. Registration No. 3,561,054), and WILDCAT 427X (U.S. Registration No. 3,950,962) for use with on-road "motorcycles" (the "Wildcat Registrations").

25. Sabertooth has alleged that Arctic Cat's use of the trademarks WILDCAT, WILDCAT 4, and WILDCAT X with Side by Side off-road vehicles infringes Sabertooth's trademark rights.

26. Arctic Cat denies that its use of the trademarks WILDCAT, WILDCAT 4, WILDCAT 650, WILDCAT 1000, and WILDCAT X (hereafter "WILDCAT Marks") with Side by Side off-road vehicles infringes Sabertooth's trademarks. On-road motorcycles and off-road power sport vehicles are distinct, non-competitive products, and Arctic Cat makes prominent use of the ARCTIC CAT trademark and the Arctic Cat Logo with the WILDCAT Marks.

27. Arctic Cat is aware of no occasion where a customer of Arctic Cat or Sabertooth has been legitimately confused by Arctic Cat's use of the WILDCAT Marks. Although Sabertooth claims that actual confusion has occurred, Sabertooth appears to have manufactured that evidence in attempt to support its unfounded allegations.

28. Arctic Cat has a long history of using the WILDCAT trademark, and used that mark in conjunction with Arctic Cat's "Wildcat" model snowmobiles, at least as early as the 1980's. In February 2011, Arctic Cat began using the WILDCAT trademark with Side by Side off-road vehicles, and Arctic Cat later expanded its use of the WILDCAT trademark to include WILDCAT 4, WILDCAT 650, WILDCAT 1000, and WILDCAT X. Sabertooth has presented no credible evidence of actual confusion in the nearly two years Arctic Cat has been using the WILDCAT Marks with Side by Side off-road vehicles.

SABERTOOTH'S TRADEMARK REGISTRATIONS

29. On December 27, 2005, a company called VX Unlimited, Inc. filed an intent-to-use application for the WILDCAT mark in U.S. Registration No. 3,490,382.

30. On May 2, 2007, a "new assignment" form was filed at the USPTO indicating that there was a "change of name" from VX Unlimited, Inc. to Sabertooth Motorcycles, LLC. No underlying written assignment of the application or WILDCAT mark was filed with the form document.

31. On information and belief, VX Unlimited, Inc. did not change its name to Sabertooth Motorcycles, LLC.

32. In addition, Sabertooth was formed on November 9, 2006, but VX Unlimited, Inc. continued to exist at that time and was not dissolved until March 30, 2009 – almost two years after the alleged "name change" occurred.

33. Without a transfer of VX Unlimited, Inc.'s business and goodwill associated with the WILDCAT mark to Sabertooth, there was no assignment of the trademark under 15 U.S.C. § 1060(a)(1).

34. Furthermore, 15 U.S.C. § 1060(a)(1) prevents any assignment of an intent-to-use application before the statement of use is filed, unless the assignment is to a successor to the business of the applicant.

35. There is no indication that Sabertooth is the successor to VX Unlimited, Inc. and the alleged "assignment" was recorded at the USPTO more than a year before Sabertooth filed a statement of use on June 18, 2008.

36. Accordingly, there is no valid assignment of the WILDCAT mark in U.S. Registration No. 3,490,382 from VX Unlimited, Inc. to Sabertooth.

37. Sabertooth filed used-based applications for the remaining Wildcat Registrations between June 24, 2008 and September 23, 2010.

38. On information and belief, there was no bona fide use of the marks in U.S. Registration Nos. 3,554,107 (SABERTOOTH MIDNIGHT WILDCAT); 3,580,465 (WILDCAT X); 3,561,054 (WILDCAT 427); and 3,950,962 (WILDCAT 427X) in commerce prior to the filing of the use-based applications.

39. In addition to its non-use of the marks at the time of filing, during prosecution of the Wildcat Registrations, Sabertooth knowingly made false, material misrepresentations with the intent to deceive the USPTO.

40. For each of the Wildcat Registrations except Registration No. 3,950,962 for WILDCAT 427X, the date of “first use” alleged by Sabertooth is December 1, 2005 with a first use “in commerce” date of February 1, 2006.

41. For Registration No. 3,950,962, the date of “first use” alleged by Sabertooth is February 1, 2006 with a first use “in commerce” date of March 1, 2006.

42. Sabertooth was not formed until November 9, 2006 – months after the alleged first use and first use in commerce dates alleged by Sabertooth in the Wildcat Registrations.

43. Sabertooth knew that it had not used the marks in the Wildcat Registrations in commerce on the dates identified in the Wildcat Registrations because the company did not exist at the time.

44. Sabertooth also knew that it had not manufactured, offered for sale, or sold any motorcycles in connection with the marks in the Wildcat Registrations on the alleged first use dates.

45. Sabertooth falsely represented its first use of the marks in the Wildcat Registrations with the intent to deceive the USPTO.

46. Sabertooth also knowingly submitted improper specimens as proof of use in commerce during prosecution of the Wildcat Registrations with the intent to deceive the USPTO.

47. On information and belief, the specimens submitted by Sabertooth were fabricated to allege actual use in commerce. The specimens themselves do not evidence any actual use in commerce as of the filing date of the Wildcat Registrations.

48. Sabertooth also owns U.S. Registration No. 3,576,038 for a cat head logo



() for use with “motorcycles.”

49. Sabertooth’s use of the marks in the Wildcat Registrations and U.S. Registration No. 3,576,038 in commerce, if any, has been extremely limited and sporadic.

50. On information and belief, Sabertooth did not sell any motorcycles for a period of at least three years.

51. Sabertooth also owns U.S. Registration No. 4,209,078 for the mark WILDCAT for use with “beer; bottled water; energy drinks; flavored bottled water; powders used in the preparation of isotonic sports drinks and sports beverages; soft drinks; soft drinks, namely, sodas; sports drinks; sports drinks, namely, energy drinks.”

52. On information and belief, Sabertooth has never used the WILDCAT mark in connection with the goods identified in U.S. Registration No. 4,209,078 even though it filed a use-based trademark application that alleged a “first use” date of December 15, 2005 and a first use “in commerce” date of March 1, 2006.

53. On information and belief, the specimen Sabertooth submitted during prosecution of U.S. Registration No. 4,209,078 was fabricated to allege actual use in commerce. The specimen itself does not evidence any actual use in commerce as of the filing date of U.S. Registration No. 4,209,078.

54. Thus, during prosecution of U.S. Registration No. 4,209,078, Sabertooth knowingly made false, material misrepresentations with the intent to deceive the USPTO.

55. Based on Sabertooth's non-use of the marks in its trademark registrations, fraudulent conduct before the USPTO, and failure to obtain a proper assignment of the WILDCAT mark in U.S. Registration No. 3,490,382, Arctic Cat filed a petition to cancel the Wildcat Registrations and U.S. Registration Nos. 4,209,078 and 3,576,038 with the Trademark Trial and Appeal Board.

56. The foregoing allegations are incorporated in the claims below.

COUNT ONE
Trademark Infringement Under the Lanham Act

57. Sabertooth's unauthorized use of the MOUNTAIN LION Mark and Logo in isolation without the SABERTOOTH trademark and in connection with an off-road ATV is likely to cause confusion as to the affiliation, connection, or association between Sabertooth and Arctic Cat.

58. Sabertooth's actions also misrepresent the origin of its goods and services because customers are likely to think that Sabertooth's goods and services originate with Arctic Cat or are somehow provided through Arctic Cat.

59. Sabertooth's use of the MOUNTAIN LION Mark and Logo infringes Arctic Cat's trademark rights under the Lanham Act.

60. Sabertooth acted deliberately and willfully in attempt to trade upon the goodwill associated with the Arctic Cat Logo and Arctic Cat's other cat-themed trademarks.

61. Sabertooth's conduct is causing, and will continue to cause, irreparable harm to Arctic Cat unless it is enjoined by this Court.

62. Arctic Cat has suffered damages as a result of Sabertooth's actions in an amount to be proven at trial.

COUNT TWO
Violation of Minnesota Uniform Deceptive Trade Practices Act

63. Sabertooth's use of the MOUNTAIN LION Mark and Logo in isolation without the SABERTOOTH trademark and in connection with an off-road ATV is likely to cause confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services.

64. Sabertooth's conduct is also likely to cause confusion or misunderstanding as to any affiliation, connection, or association between Arctic Cat and Sabertooth.

65. Sabertooth's actions violate Minn. Stat. § 325D.44.

66. Sabertooth has willfully engaged in the above-described trade practices, knowing them to be deceptive.

67. As a result of Sabertooth's conduct, Arctic Cat is entitled to an injunction and attorneys' fees under Minn. Stat. § 325D.45.

COUNT THREE
Unfair Competition

68. Sabertooth's actions constitute unfair competition.

69. Arctic Cat has been damaged as a result of the defendant's unfair competition in an amount to be proven at trial.

COUNT FOUR
Declaratory Judgment

70. An actual case and controversy exists concerning Arctic Cat's use of the WILDCAT Marks with Side by Side off-road vehicles.

71. Sabertooth has alleged that Arctic Cat's use of the WILDCAT, WILDCAT 4 and WILDCAT X trademarks with Side by Side off-road vehicles infringes Sabertooth's alleged trademark rights.

72. Arctic Cat disputes that there is any infringement of any valid trademark owned by Sabertooth. Arctic Cat has been using the WILDCAT Marks with Side by Side off-road vehicles since 2011 without a single instance of bona fide confusion between Arctic Cat and Sabertooth.

73. This Court has jurisdiction over the dispute and the claim is ripe for adjudication.

74. Accordingly, Arctic Cat seeks a declaration of this Court that it is lawfully using the WILDCAT Marks with Side by Side off-road vehicles, and does not infringe Sabertooth's rights under federal or state law.

COUNT FIVE
Cancellation of U.S. Registration No. 3,490,382 Under 15 U.S.C. § 1060

75. The Court has the authority to order cancellation of U.S. Registration No. 3,490,382 for the trademark WILDCAT under 15 U.S.C. § 1119.

76. U.S. Registration No. 3,490,382 has been registered for less than five years and has not obtained incontestability under 15 U.S.C. § 1065.

77. Cancellation of U.S. Registration No. 3,490,382 for WILDCAT is warranted because there is no assignment of the underlying application or the business and goodwill associated with the mark to Sabertooth, and any attempt to assign the intent-to-use application to Sabertooth prior to the filing of the statement of use was improper and invalid under 15 U.S.C. § 1060(a)(1).

78. Accordingly, U.S. Registration No. 3,490,382 should be canceled.

COUNT SIX

Cancellation of U.S. Registration Nos. 3,554,107; 3,580,465; 3,561,054; 3,950,962; and 4,209,078 Due To Non-Use at the Time of Filing Use-Based Applications

79. The Court has the authority to order cancellation of U.S. Registration Nos. 3,554,107 (SASBERTOOTH MIDNIGHT WILDCAT); 3,580,465 (WILDCAT X); 3,561,054 (WILDCAT 427); 3,950,962 (WILDCAT 427X); and 4,209,078 (WILDCAT for beverages) under 15 U.S.C. § 1119.

80. The above marks have been registered for less than five years and have not obtained incontestability under 15 U.S.C. § 1065.

81. Cancellation of U.S. Registration Nos. 3,554,107; 3,580,465; 3,561,054; 3,950,962; and 4,209,078 is warranted because there was no bona fide use of the marks at the time Sabertooth filed its use-based applications.

82. Accordingly, U.S. Registration Nos. 3,554,107; 3,580,465; 3,561,054; 3,950,962; and 4,209,078 should be canceled.

COUNT SEVEN

**Cancellation of the Wildcat Registrations and
U.S. Registration No. 4,209,078 Due To Fraud**

83. The Court has the authority to order cancellation of the Wildcat Registrations and U.S. Registration No. 4,209,078 (WILDCAT for beverages) under 15 U.S.C. § 1119.

84. The Wildcat Registrations and U.S. Registration No. 4,209,078 have been registered for less than five years and have not obtained incontestability under 15 U.S.C. § 1065.

85. Cancellation of the Wildcat Registrations and U.S. Registration No. 4,209,078 is warranted because Sabertooth committed fraud during prosecution of the registrations by knowingly making false, material misrepresentations and submitting improper specimens with the intent to deceive the USPTO.

86. Accordingly, the Wildcat Registrations and U.S. Registration No. 4,209,078 should be canceled.

COUNT EIGHT

**Cancellation of the Wildcat Registrations and
U.S. Registration Nos. 3,576,038 and 4,209,078 Due to Abandonment**

87. The Court has the authority to order cancellation of the Wildcat Registrations, U.S. Registration No. 3,576,038 (cat head logo) and U.S. Registration No. 4,209,078 (WILDCAT for beverages) under 15 U.S.C. § 1119.

88. The Wildcat Registrations, U.S. Registration No. 3,576,038 and U.S. Registration No. 4,209,078 have been registered for less than five years and have not obtained incontestability under 15 U.S.C. § 1065.

89. Cancellation of the Wildcat Registrations and U.S. Registration Nos. 3,576,038 and 4,209,078 is warranted because Sabertooth abandoned the registered marks through non-use with the identified goods for at least three years.

90. Accordingly, the Wildcat Registrations and U.S. Registration Nos. 3,576,038 and 4,209,078 should be canceled.

JURY DEMAND

91. Arctic Cat demands a jury trial for all issues triable to a jury.

WHEREFORE, Arctic Cat asks the Court to:

1. Enter judgment against the defendants in favor of Arctic Cat, in an amount to be determined at trial;
2. Preliminarily and permanently enjoin Sabertooth from using the MOUNTAIN LION Mark and Logo in connection with an off-road ATV;
3. Declare that Arctic Cat's use of the WILDCAT Marks with Side by Side off-road vehicles does not and would not infringe any rights Sabertooth has under state or federal law;
4. Order cancellation of U.S. Registration Nos. 3,490,382 for WILDCAT, 3,554,107 for SABERTOOTH MIDNIGHT WILDCAT, 3,561,054 for WILDCAT 427, 3,576,038 for the cat head logo, 3,580,465 for WILDCAT X, 3,950,962 for WILDCAT 427X, and 4,209,078 for WILDCAT with beverages.
5. Award Arctic Cat the costs and attorneys' fees incurred in this action; and
6. Grant any other relief the Court deems just and equitable.

Dated: August 16, 2013

s/ Lora M. Friedemann

Lora M. Friedemann (#259615)

Laura Myers (#387116)

FREDRIKSON & BYRON, P.A.

200 South Sixth Street, Suite 4000

Minneapolis, Minnesota 55402-1425

(612) 492-7000 (tel.)

(612) 492-7077 (fax)

Attorneys for Arctic Cat Inc.

7196789

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Arctic Cat, Inc., a Minnesota corporation,

Plaintiff,

vs.

Sabertooth Motor Group, LLC, a Delaware
limited liability company, and Sabertooth
Motorcycles, LLC, a Delaware limited
liability company,

Defendants.

Court File No. 13-cv-146-MJD-LIB

DEFENDANTS' ANSWER
TO AMENDED COMPLAINT AND
COUNTERCLAIMS

Defendants Sabertooth Motor Group, LLC and Sabertooth Motorcycles, LLC
(collectively "Sabertooth"), for their Answer to Plaintiff Arctic Cat, Inc.'s ("Arctic Cat")
Amended Complaint, and Counterclaims, state and allege as follows:

1. In response to the allegations in paragraph 1, Sabertooth admits the
allegations in the first three sentences, and denies the allegations in the fourth sentence.
2. In response to the allegations in paragraph 2, Sabertooth admits that
Sabertooth Motor Group, LLC is a Delaware limited liability company, but denies the
remaining allegations.
3. In response to the allegations in paragraph 3, Sabertooth admits that
Sabertooth Motorcycles, LLC is a Delaware limited liability company, and that it is a
wholly-owned subsidiary of Sabertooth Motor Group, LLC, but denies the remaining
allegations.

4. In response to the allegations in paragraph 4, Sabertooth denies that Arctic Cat is entitled to any relief it seeks on the claims asserted in this action.

5. Sabertooth admits the allegations in paragraph 5.

6. Sabertooth admits the allegations in paragraph 6.

7. In response to the allegations in paragraph 7, Sabertooth admits that Arctic Cat uses the Arctic Cat Logo on some of its power sports vehicles, equipment and related accessories, and denies the remaining allegations.

8. In response to the allegations in paragraph 8, Sabertooth states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations, and therefore denies the allegations.

9. In response to the allegations in paragraph 9, Sabertooth states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations, and therefore denies the allegations.

10. In response to the allegations in paragraph 10, Sabertooth states that the registrations cited are written documents that speak for themselves; accordingly, Sabertooth denies any allegation contained in paragraph 10 that mischaracterizes, omits in any way or deviates from the terms of those registrations.

11. In response to the allegations in paragraph 11, Sabertooth states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations, and therefore denies the allegations.

12. Sabertooth denies the allegations in paragraph 12.

13. Sabertooth denies the allegations in paragraph 13.

14. In response to the allegations in paragraph 14, Sabertooth admits that it has designed and sold motorcycles, states that it has done advertising and other work regarding products in the power sports industry, including motorcycles, ATVs and trikes, and denies the remaining allegations.

15. Sabertooth admits that the picture depicted in paragraph 15 was part of an image on its website, and denies the remaining allegations in paragraph 15.

16. In response to the allegations in paragraph 16, Sabertooth states that it has advertised an ATV with a cathead logo that is the subject of one of Sabertooth's federal trademark registrations, and denies the remaining allegations.

17. Sabertooth denies the allegations in paragraph 17.

18. Sabertooth denies the allegations in paragraph 18.

19. In response to the allegations in paragraph 19, Sabertooth admits that it owns U.S. Registration No. 3,576,038 for a cat head logo, and denies the remaining allegations.

20. In response to the allegations in paragraph 20, Sabertooth admits that Arctic Cat used the Arctic Cat Logo and other cat themed logos with some ATVs, Side by Sides and other power sport vehicles before Sabertooth began advertising the MOUNTAIN LION Mark and logo with a four wheel ATV, but denies that Arctic Cat's cathead logo has priority over Sabertooth's trademarks.

21. Sabertooth denies the allegations in paragraph 21.

22. In response to the allegations in paragraph 22, Sabertooth admits that it is without consent, permission, or license from Arctic Cat, but denies that any such consent,

permission or license is required.

23. Sabertooth denies the allegations in paragraph 23.

24. In response to the allegations in paragraph 24, Sabertooth admits that it is the owner of the listed Wildcat Registrations, but denies that those Registrations are limited to “on-road” motorcycles.

25. Sabertooth admits the allegations in paragraph 25.

26. In response to the allegations in paragraph 26, Sabertooth alleges that Arctic Cat’s use of the WILDCAT Marks with Side by Side vehicles, other products in the power sports industry, and related accessories, infringes Sabertooth’s trademarks, and denies the remaining allegations.

27. Sabertooth denies the allegations in paragraph 27.

28. In response to the allegations in paragraph 28, Sabertooth admits that Arctic Cat began using the WILDCAT trademark with Side by Side vehicles in 2011, and that it later expanded its use of the WILDCAT trademark, after being on notice that its use of the WILDCAT trademark constituted trademark infringement, and Sabertooth denies the remaining allegations.

29. Sabertooth admits the allegations in paragraph 29.

30. In response to the allegations in paragraph 30, Sabertooth admits that a Trademark Assignment document was filed with the USPTO on May 2, 2007, and states that the document is a written document that speak for itself; accordingly, Sabertooth denies any allegation contained in paragraph 30 that mischaracterizes, omits in any way or deviates from the terms of that document.

31. Sabertooth admits the allegations in paragraph 31.

32. In response to the allegations in paragraph 32, Sabertooth admits that Sabertooth Motorcycles, LLC was formed on November 9, 2006, and denies the remaining allegations.

33. Sabertooth denies the allegations in paragraph 33.

34. The allegations in paragraph 34 state a legal conclusion for which no response is required.

35. In response to the allegations in paragraph 35, Sabertooth denies the allegation that “[t]here is no indication that Sabertooth is the successor to VX Unlimited, Inc.,” and therefore denies the remaining allegations.

36. Sabertooth denies the allegations in paragraph 36.

37. Sabertooth admits the allegations in paragraph 37.

38. Sabertooth denies the allegations in paragraph 38.

39. Sabertooth denies the allegations in paragraph 39.

40. Sabertooth admits the allegations in paragraph 40.

41. Sabertooth admits the allegations in paragraph 41.

42. In response to the allegations in paragraph 42, Sabertooth admits that the entity Sabertooth Motorcycles, LLC was formed on November 9, 2006, which is after the first use in commerce of its Wildcat trademarks, and denies the remaining allegations.

43. Sabertooth denies the allegations in paragraph 43.

44. Sabertooth denies the allegations in paragraph 44.

45. Sabertooth denies the allegations in paragraph 45.

46. Sabertooth denies the allegations in paragraph 46.
47. Sabertooth denies the allegations in paragraph 47.
48. Sabertooth admits the allegations in paragraph 48.
49. Sabertooth denies the allegations in paragraph 49.
50. Sabertooth denies the allegations in paragraph 50.
51. Sabertooth admits the allegations in paragraph 51.
52. Sabertooth denies the allegations in paragraph 52.
53. Sabertooth denies the allegations in paragraph 53.
54. Sabertooth denies the allegations in paragraph 54.
55. Sabertooth denies the allegations in paragraph 55.
56. Sabertooth's foregoing responses are incorporated in the responses below.
57. Sabertooth denies the allegations in paragraph 57.
58. Sabertooth denies the allegations in paragraph 58.
59. Sabertooth denies the allegations in paragraph 59.
60. Sabertooth denies the allegations in paragraph 60.
61. Sabertooth denies the allegations in paragraph 61.
62. Sabertooth denies the allegations in paragraph 62.
63. Sabertooth denies the allegations in paragraph 63.
64. Sabertooth denies the allegations in paragraph 64.
65. Sabertooth denies the allegations in paragraph 65.
66. Sabertooth denies the allegations in paragraph 66.
67. Sabertooth denies the allegations in paragraph 67.

68. Sabertooth denies the allegations in paragraph 68.

69. Sabertooth denies the allegations in paragraph 69.

70. Sabertooth admits the allegations in paragraph 70.

71. Sabertooth admits the allegations in paragraph 71.

72. Sabertooth denies the allegations in paragraph 72.

73. Sabertooth admits the allegations in paragraph 73.

74. In response to the allegations in paragraph 74, Sabertooth alleges that Arctic Cat's use of the WILDCAT Marks with Side by Side vehicles, and related products and accessories, infringes Sabertooth's WILDCAT trademarks; accordingly, Sabertooth opposes the declaration sought by Arctic Cat.

75. Paragraph 75 states a legal conclusion for which no response is required.

76. In response to the allegations in paragraph 76, Sabertooth admits that it has not filed an affidavit pursuant to 15 U.S.C. § 1065 for U.S. Registration No. 3,490,382, states that whether the registration has "obtained incontestability" is a legal conclusion for which no response is required, and denies the remaining allegations.

77. Sabertooth denies the allegations in paragraph 77.

78. Sabertooth denies the allegations in paragraph 78.

79. Paragraph 79 states a legal conclusion for which no response is required.

80. In response to the allegations in paragraph 80, Sabertooth admits that the registration listed in paragraph 79 have been registered for less than five years, and states that whether those registrations have "obtained incontestability" is a legal conclusion for which no response is required.

81. Sabertooth denies the allegations in paragraph 81.

82. Sabertooth denies the allegations in paragraph 82.

83. Paragraph 83 states a legal conclusion for which no response is required.

84. In response to the allegations in paragraph 84, Sabertooth admits that the U.S. Registration No. 4,209,078 has been registered for less than five years, and states that whether the registration has “obtained incontestability” is a legal conclusion for which no response is required.

85. Sabertooth denies the allegations in paragraph 85.

86. Sabertooth denies the allegations in paragraph 86.

87. Paragraph 87 states a legal conclusion for which no response is required.

88. In response to the allegations in paragraph 88, Sabertooth admits that U.S. Registration No. 3,576,038 and U.S. Registration No. 4,209,078 have been registered less than five years, and states that whether the registrations have “obtained incontestability” is a legal conclusion for which no response is required.

89. Sabertooth denies the allegations in paragraph 89.

90. Sabertooth denies the allegations in paragraph 90.

91. Unless otherwise admitted or responded to herein, Sabertooth denies each and every allegation in Plaintiff’s Complaint.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim upon which any relief can be granted against Sabertooth.

2. Arctic Cat's claims regarding the WILDCAT mark are barred by its abandonment of that trademark prior to Sabertooth's use and the filing of its applications for federal registration of its WILDCAT trademarks.

3. Arctic Cat's claims are barred, in part, by the doctrine of laches.

4. Arctic Cat's claims are barred, in whole or in part, by doctrine of unclean hands.

5. Sabertooth reserves the right to amend its Answer to include additional affirmative defenses that discovery and further investigation may disclose as appropriate.

COUNTERCLAIMS AND JURY DEMAND

For their Counterclaims against Counterclaim Defendant Arctic Cat, Inc., Sabertooth Motorcycles, LLC and Sabertooth Motor Group, LLC (collectively, "Sabertooth"), state and allege as follows:

THE PARTIES

1. Counterclaim Plaintiff Sabertooth Motorcycles, LLC is a Delaware limited liability company with a corporate office at 5 Sachem Road, Needham, Massachusetts, 02494, and a production facility at 15804 Central Avenue, NE, Ham Lake, Minnesota.

2. Counterclaim Plaintiff Sabertooth Motor Group, LLC is a Delaware limited liability company with a corporate office at 5 Sachem Road, Needham, Massachusetts, 02494, and a production facility at 15804 Central Avenue, NE, Ham Lake, Minnesota.

3. Counterclaim Defendant Arctic Cat, Inc. ("Arctic Cat") is a Minnesota corporation with its principal place of business at 601 Books Avenue South, Thief River Falls, Minnesota.

NATURE OF THE ACTION; JURISDICTION OF THE COURT

4. This is an action for trademark infringement and false designation of origin in violation of the Lanham Act, 15 U.S.C. §1051, et seq.; deceptive trade practices in violation of Minnesota law, Minn. Stat. §325D.44, et seq.; and unfair competition under the common law.

5. This Court has jurisdiction over the subject matter of this action under 15 U.S.C. §1114 et seq., 1121 and 28 U.S.C. §§1331, 1338, 2201, and 2202.

6. This Court has personal jurisdiction over Counterclaim Defendant Arctic Cat because Arctic Cat is a citizen of this District and has transacted and is transacting business in this District, and has made, used, offered for sale, or sold goods in this District.

7. Venue is proper in this Court pursuant to 28 U.S.C. §1391(b) and (c) and 1400(b) because Arctic Cat is subject to personal jurisdiction in this District and has committed acts of trademark infringement, false designation of origin, and other wrongful acts in this District.

SABERTOOTH'S TRADEMARK RIGHTS

8. Counterclaim Plaintiffs Sabertooth Motorcycles, LLC and Sabertooth Motor Group, LLC design, market and sell V8-powered two and three-wheel motorcycles under the federally-registered trademarks WILDCAT, SABERTOOTH MIDNIGHT WILDCAT, WILDCAT X, WILDCAT 427, and WILDCAT 427X.



9. Sabertooth also has common law rights to the mark WILDCAT for use with clothing and other items, which it has been selling continuously under that mark since 2006.

10. Sabertooth Motorcycles was originally conceived in 2005 to build the ultimate V8 motorcycle, and Sabertooth's WildCat® motorcycles are its flagship products. Sabertooth has invested a great deal of time, energy, and resources in developing and promoting its WILDCAT brand.

11. In 2008, Sabertooth shifted focus towards broader research and development, engineering, and vehicle design with the goal of innovating a new generation of three-wheel recreational vehicles, also known as trikes, incorporating parallel twin engines and which it had identified as the next growth area of the power sports industry. Towards that end, Sabertooth has invested significant time and money to optimize geometry and configuration, develop patent pending suspension, stability, and steering enhancements and updated styling. Sabertooth intended to market these and other related products using its WILDCAT brand.

12. Sabertooth's mark WILDCAT® is the subject of the following registrations in the United States Patent and Trademark Office:

Mark	Goods/Services	First Use in Commerce	Reg. No.	Reg. Date
WILDCAT	Motorcycles	2/1/2006	3,490,382	August 19, 2008

SABERTOOTH MIDNIGHT WILDCAT	Motorcycles	2/1/2006	3,554,107	December 30, 2008
WILDCAT X	Motorcycles	2/1/2006	3,580,465	February 24, 2009
WILDCAT 427	Motorcycles	2/1/2006	3,561,054	January 13, 2009
WILDCAT 427X	Motorcycles	3/1/2006	3,950,962	April 26, 2011
WILDCAT	Beer; Bottled water; Energy drinks; Flavored bottled water; Powders used in the preparation of isotonic sports drinks and sports beverages; Soft drinks; Soft drinks, namely, sodas; Sports drinks; Sports drinks, namely, energy drinks	3/1/2006	4,209,078	September 18, 2012
	Motorcycles	2/1/2006	3,576,038	February 17, 2009
	Motorcycles; Motorcycles and structural parts therefor; Motorcycle trike conversion kits for converting a two-wheeled motorcycle into a three- wheeled motorcycle	2/1/2007	3,375,323	January 29, 2008

13. Sabertooth has owned and used all of these marks (collectively, the “WILDCAT Marks”) continuously since at least their first use in commerce dates.

14. Sabertooth’s SABERTOOTH MOTORCYCLES and Design registration (No. 3, 375,323) has achieved incontestable status pursuant to 15 U.S.C. §1065.

15. Sabertooth has spent large sums of money advertising and promoting its WILDCAT mark for more than seven years, in many forms of media, including print and electronic advertising, and displaying at Power Sports tradeshow and rallies. In addition, during the fall of 2010, Sabertooth promoted its WILDCAT motorcycles to the public by sponsoring and participating in a television show on MTV called “Burnout: The ultimate Drag Race Challenge” which featured a WILDCAT motorcycle and WILDCAT CLASSIC trike. The program aired in the summer of 2011.

16. Due to Sabertooth’s efforts, Sabertooth’s WILDCAT Marks have achieved recognition and good will among members of the public, who have come to associate the mark WILDCAT with V8-powered motorcycles, trikes and other power sports products and related accessories.

17. Sabertooth also owns many other cat-themed trademarks, including the following trademarks registered with the United States Patent and Trademark Office:

RIDE THE CAT	3,341,607	Nov. 20, 2007	Motorcycles
DYNACLAW	3,656,379	Jul. 21, 2009	Land vehicle transmissions
BOBCAT	3,314,172	Oct. 16, 2007	Motorcycles
LION	3,341,535	Nov. 20, 2007	Motorcycles
ROAD LION	3,589,076	Mar. 10, 2009	Motorcycles

STREETCAT	3,550,186	Dec. 23, 2008	Motorcycles
STREETCAT X	3,950,961	Apr. 26, 2011	Motorcycles
STREETCAT 427	3,561,055	Oct. 23, 2009	Motorcycles
STREETCAT 427X	3,561,056	Oct. 23, 2009	Motorcycles
SABERTOOTH MIDNIGHT STREETCAT	3,554,108	Dec. 30, 2008	Motorcycles
TURBOCAT	3,752,283	Feb. 23, 2010	Motorcycles
CATROD	3,549,731	Dec. 23, 2008	Motorcycles
BENGAL	3,341,534	Oct. 30, 2007	Motorcycles
ROYAL BENGAL	3,341,536	Nov. 20, 2007	Motorcycles
LEOPARD	3,327,031	Oct. 30, 2007	Motorcycles
SMART CAT	4,340,801	May 28, 2013	Anti-theft alarms and back-up warning alarms for power sports vehicles
CARNIVORE	3,518,465	Oct. 14, 2008	Motorcycle engines
PREDATOR	4,157,858	Jun. 12, 2012	Motorcycle engines

THE POWER SPORTS INDUSTRY

18. Sabertooth and Arctic Cat both compete, and sell WILDCAT branded products, in the power sports industry.

19. Motorcycles, ATVs and Side by Sides are sold in the same channels of distribution, reviewed in the same magazines and trade journals, exhibited at the same trade shows, and attract the same or similar audience.

20. The Kelley Blue Book and NADA guides categorize all powers ports products (which includes on and off road motorcycles, ATVs, snowmobiles and personal watercraft) as “motorcycles.”

21. Upon information and belief, Arctic Cat is a member of the Motorcycle Industry Council.

22. Sabertooth’s WildCat® motorcycles and other products, and Arctic Cat’s WILDCAT branded Side by Sides and other products, are advertised and reviewed in the same magazines and trade journals. For example, Arctic Cat has advertised its WILDCAT Side by Sides and its ATV products in the power sports industry magazine, Motorcycle USA. That same magazine has published articles regarding Sabertooth motorcycles.

23. Dealernews.com, which describes itself as “the voice of powersports retailers online,” has included many articles about Sabertooth and its WildCat® motorcycles. That same publication has included many articles about Arctic Cat and its WILDCAT branded products. For example, on July 30, 2012, Dealernews.com published an article titled “Wildcat drives Arctic Cat sales increases.” It has also published many articles regarding Arctic Cat’s various WILDCAT branded products. The print version of Dealer News has also run stories about Sabertooth’s WildCat® products as well as Arctic Cat’s WILDCAT branded products.

24. Similarly, the publication Powersports Business has included numerous articles and reviews about Sabertooth’s WildCat® products and Arctic Cat’s WILDCAT branded products.

25. Consumers can purchase kits to convert their two wheeled motorcycles into three-wheeled or four-wheeled motorcycles.

26. Dealers that sell Arctic Cat's WILDCAT Side by Sides and ATVs often also sell motorcycles and other power sports products.

ARCTIC CAT'S WRONGFUL CONDUCT

A. Arctic Cat's Infringement of Sabertooth's WILDCAT Marks

27. Despite Sabertooth's use of its WILDCAT Marks since early 2006, Counterclaim Defendant Arctic Cat embarked in 2011 on a systematic and blatant effort to copy and actually usurp Sabertooth's marks.

28. Upon information and belief, Arctic Cat knew of Sabertooth's registered WILDCAT Marks prior to Arctic Cat's decision to use the mark in 2011.

29. On April 29, 2011, Arctic Cat applied to the United States Patent and Trademark Office (USPTO) for a trademark for WILDCAT for use with Side by Side vehicles, despite Sabertooth already holding a registered trademark for the identical mark WILDCAT.

30. In September 2011, the USPTO issued a rejection of Arctic Cat's application, citing a likelihood of confusion with Sabertooth's WILDCAT Marks.

31. In October 2011, Sabertooth's CEO Ben Daniels called Arctic Cat's outside trademark counsel to discuss Arctic Cat's infringement on Sabertooth's WILDCAT Marks. Mr. Daniels left a message asking Arctic Cat's counsel to return his call regarding the WILDCAT Marks, but Arctic Cat's counsel never returned the call.

32. In November 2011, Mr. Daniels sent a letter to Arctic Cat's CEO Claude Jordan advising him of Arctic Cat's infringement. In response, Arctic Cat's outside counsel called Mr. Daniels and indicated that Arctic Cat would not cease infringing upon Sabertooth's WILDCAT Marks.

33. In March 2012, Arctic Cat filed a response to the USPTO's first refusal to allow it to register WILDCAT.

34. In May 2012, the USPTO issued a final refusal for Arctic Cat's WILDCAT trademark application.

35. In June 2012, Mr. Daniels sent a second letter to Mr. Jordan at Arctic Cat reiterating Sabertooth's demand that Arctic Cat cease infringing upon its WILDCAT Marks, especially in light of the USPTO's finding that a likelihood of confusion existed between Sabertooth's WILDCAT Marks and Arctic Cat's use of WILDCAT.

36. In July 2012, Arctic Cat's General Counsel Michael Okerlund called Mr. Daniels and indicated that he (Mr. Okerlund) would research the infringement issue.

37. Between August-November 2012, Sabertooth's vice chairman Chris Velis and Mr. Okerlund at Arctic Cat participated in discussions surrounding the WILDCAT Mark.

38. On November 13, 2012, Mr. Okerlund sent Mr. Velis a letter requesting more information about Sabertooth.

39. On November 14, 2012, Arctic Cat filed for Reconsideration of the refusal to register its WILDCAT trademark application.

40. On November 29, 2012, Mr. Velis sent a follow up letter to Mr. Okerlund, containing information that Mr. Okerlund had requested, which went unanswered.

41. Just days later, on December 4, 2012, Arctic Cat doubled down on its infringement and announced that it was introducing a WILDCAT 4 model all-terrain vehicle to be available in March 2013. It made the announcement in spite of its knowledge that Sabertooth owns the registered trademark WILDCAT 427.

42. Then on December 28, 2012, Arctic Cat announced that it was introducing the WILDCAT X and WILDCAT 1000X. Arctic Cat made the decision to introduce these models with full knowledge that Sabertooth already owned the trademarks for WILDCAT X and WILDCAT 427X.

43. On January 4, 2013, the USPTO issued a final denial of Arctic Cat's request for reconsideration of Arctic Cat's WILDCAT application for use with all terrain vehicles.

44. Following the final denial, Sabertooth communicated with Arctic Cat, again demanding that the infringement cease and seeking a resolution to the dispute.

45. In response, instead of providing any defense for its actions or a proposal to address the problem it created, on January 16, 2013, Arctic Cat filed this action. Arctic Cat waited to serve Sabertooth with the Complaint until May 2013.

46. The USPTO has until now allowed Arctic Cat's application for WILDCAT for use with clothing to proceed through the examination process, but Sabertooth intends to file an opposition to Arctic Cat's application based upon Sabertooth's prior and

ongoing use of the identical mark with clothing. Sabertooth has requested and received an extension of time from the USPTO to file its opposition.

47. Arctic Cat's use of the marks WILDCAT, WILDCAT 4, WILDCAT X, WILDCAT 4X, WILDCAT 1000X, and other WILDCAT marks for Side by Sides, ATVs, and related clothing and accessories, is likely to cause confusion, mistake or deception among members of the public as to the source of Arctic Cat's goods and/or as to some affiliation, connection, or association between Sabertooth and Arctic Cat when no such affiliation, connection, or association exists.

48. Sabertooth is aware of numerous instances of actual confusion. For example, in December 2011, a customer emailed Arctic Cat asking:

Are you also going to be making the Wildcat with V8 power like your motorcycles? I am interested in seeing more about your motorcycles and ATV's! I have seen the Wildcat V8 motorcycles before but this is the first for the ATV! Are you still producing your V8 motorcycles? I could not find anything on your site about them? Thanks for any information you can send my way!

An Arctic Cat employee responded:

You have confused Arctic Cat with some other company, probably Polaris. Arctic Cat produces ATV's, Prowlers, and now the new Wildcat side x side.

49. A consumer posted a photo of the Sabertooth WILDCAT motorcycle on ATV Torture Forum in December 2011 asking:

Has anyone heard when Arctic Cat will sell the Wildcat ATV with the 427 cu. in. V8 like their Wildcat motorcycles? I can't wait to get one of these cool machines in my hands!

50. Consumers have made statements demonstrating actual confusion on Arctic Cat's own internet forums. For example, in December 2011, a consumer posted a photo of Sabertooth's WILDCAT motorcycle and wrote on the ArcticChat.com message board:

When will Arctic Cat be producing the Wildcat with the 427 cubic inch V8 ATV's like their Wildcat 427X motorcycles? Finally some real power to be had in these awesome machines!

Similarly, in November 2011, a consumer posted a comment to Arctic Cat's newsletter, ArcticInsider, stating:

I agree the wildcat has potential, however it is definitely underpowered. Does anyone know if there are any plans to make a wildcat with a v8 like they use in the wildcat motorcycle? No one could ever accuse it of being underpowered.

51. In addition, Sabertooth has received calls and emails from consumers demonstrating actual confusion. For example, in December 2012, a consumer emailed Sabertooth inquiring about a "wildcat 4 seater," an apparent reference to Arctic Cat's products.

52. By introducing its WILDCAT products in 2011, expanding its use of WILDCAT on many Side by Sides and accessories, and saturating the market with advertisements, Arctic Cat has caused and is causing consumer confusion.

53. Many consumers now believe that WILDCAT is associated exclusively with Arctic Cat.

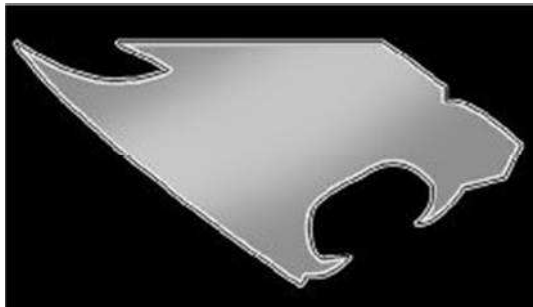
54. Because Arctic Cat has flooded the market with its use of the WILDCAT mark, web searches for "WILDCAT MOTORCYCLE" actually pull up Arctic Cat's Side by Sides, and a Google search for "WILDCAT X" simply shows Arctic Cat Side by

Sides, without displaying any WildCat X motorcycles from Sabertooth, the rightful owner of this trademark.

55. Arctic Cat's unlawful misappropriation of Sabertooth's WildCat® trademark has destroyed Sabertooth's brand, and prevented it from going to market with other products using its WildCat® mark and the good will it had built up in that brand.

B. Arctic Cat's infringement with its Cathead Logo

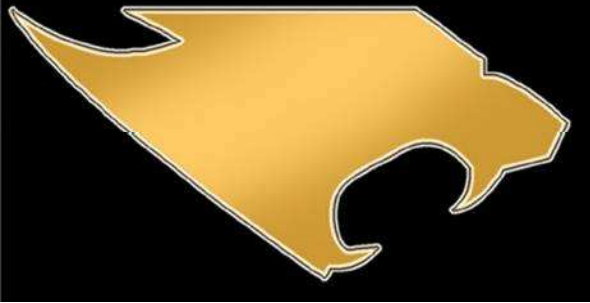









56. In addition to infringing upon Sabertooth's WILDCAT Marks, Arctic Cat is infringing upon Sabertooth's cathead logo. As noted above, Sabertooth owns a federal registration for the following design mark (hereinafter, the "Cathead Logo"):



57. After Sabertooth first began using its mark, Arctic Cat adopted the following mark, part of which closely mimics Sabertooth's Cathead Logo:



58. More recently, Arctic Cat has been using just the head of its leaping cat logo. Examples of Sabertooth's trademark and Arctic Cat's infringement include:

Sabertooth Use of Registered Cathead	Arctic Cat Infringement
	
	
	
	
 Sabertooth Motorcycles	 Arctic Cat

59. Arctic Cat's uses of its cathead logo are likely to cause confusion concerning the source, sponsorship or affiliation between Sabertooth and Arctic Cat.

60. Arctic Cat itself, in its Complaint in this case, alleges that its and Sabertooth's cathead logos are confusingly similar.

61. Sabertooth's registered cathead logo has priority over Arctic Cat's unregistered leaping cat logo. Sabertooth's first use in commerce for this mark was February 1, 2006. Arctic Cat's own trademark filings claim that its first use in commerce was not until February 28, 2006.

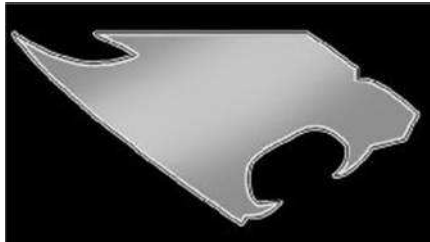
62. Sabertooth has used its registered cathead logo on clothing since 2006 and objects to Arctic Cat's use of its leaping cat logo on clothing.

C. Arctic Cat's infringement with the "Sabertooth Graphics Kit"

63. Arctic Cat also manufactures and sells something it refers to as the "Sabertooth Graphic Kit," which is a set of decals to paste onto a snowmobile. Arctic Cat's "Sabertooth Graphics Kit" infringes on the registered trademarks for Sabertooth's company name and logo, both of which are incontestable under the Lanham Act, and also upon its Cathead logo.

64. Sabertooth's Cathead mark, and the confusingly similar "Sabertooth Graphic Kit" from Arctic Cat, are shown below:

Sabertooth's Mark



(Sabertooth's "Cathead"
Design Mark)

Arctic Cat's Infringing Use

Arctic Cat's "Sabertooth
Graphic Kit"



65. Arctic Cat's "Sabertooth Graphic Kit" is likely to cause confusion concerning the source, sponsorship or affiliation between Sabertooth and Arctic Cat. The "Sabertooth Graphic Kit" is particularly likely to cause confusion given Arctic Cat's other infringement of Sabertooth's Marks, further leading consumers to mistakenly believe there is an affiliation between Sabertooth and Arctic Cat.

66. On information and belief, Arctic Cat introduced its "Sabertooth Graphic Kit" in October 2011, after the USPTO rejected its trademark application for WILDCAT, citing confusion with Sabertooth's WILDCAT marks.

D. Arctic Cat's Infringement has been Willful and in Bad Faith

67. Arctic Cat's infringement of Sabertooth's trademarks has been willful and in bad faith.

68. Arctic Cat's trademark application for WILDCAT was rejected three times by the USPTO, initially on September 9, 2011, with a final rejection issued on May 14, 2012, and a denial of its Request for Reconsideration issued January 4, 2013. In rejecting

the application, the USPTO specifically cited the likelihood of confusion with Sabertooth's marks as the basis. Despite this rejection of its trademark application, Arctic Cat did not stop its use of the mark WILDCAT. Instead, it greatly expanded its use of WILDCAT, using it to build the company's most successful brand and to achieve record profits, all in disregard of Sabertooth's rights.

69. Beginning in 2011, Sabertooth contacted Arctic Cat multiple times to inform it that Sabertooth owns the WILDCAT marks and to demand that Arctic Cat cease infringing upon Sabertooth's marks. Despite this notice of Sabertooth's rights in the WILDCAT marks, Arctic Cat has continued to use the WILDCAT marks and greatly expanded its use of WILDCAT, using it to build the company's most successful brand and to achieve record profits, all in disregard of Sabertooth's rights.

70. Since being rejected by the USPTO and being put on notice of infringement by Sabertooth, Arctic Cat has, on information and belief, introduced at least six additional Side by Sides with the WILDCAT brand and more than 100 WILDCAT branded accessories. In addition, Arctic Cat has announced plans to introduce a seventh Side by Side under the WILDCAT brand, which will reportedly be available in December of 2013.

71. Since being rejected by the USPTO and being put on notice of infringement by Sabertooth, Arctic Cat introduced its WILDCAT X Side by Side, which uses a mark identical to Sabertooth's WILDCAT X federally registered trademark. Arctic Cat has also introduced other WILDCAT models using marks, including WILDCAT 4 and

WILDCAT 4X, that are confusingly similar to Sabertooth's federally registered trademarks.

72. Arctic Cat has also begun manufacturing and selling decals that Arctic Cat flagrantly calls the "Sabertooth Graphic Kit," further exacerbating the confusion in the marketplace.

73. Sabertooth has reached out to Arctic Cat numerous times trying to resolve this dispute. Arctic Cat has never provided a written, substantive, defense for its actions, or even a proposal to address the huge problem its infringement has created.

74. Prior to filing these Counterclaims, Sabertooth reached out to Arctic Cat once again, including by letter and a meeting with counsel. Sabertooth set forth the basis for its claims, provided Arctic Cat with evidence of several examples of actual confusion, and specifically requested that Arctic Cat enter into meaningful discussions to resolve this significant problem. Arctic Cat did not respond.

75. Arctic Cat's infringement has been quite profitable. Arctic Cat's most recent Annual Report to Shareholders states that it earned record profits in fiscal 2013. Arctic Cat's own public statements, as well as articles about the company, indicate that its increases in sales have been fueled primarily by sales of WILDCAT branded products. In the short time since the introduction of its WILDCAT branded products, Arctic Cat's sales have increased by hundreds of millions of dollars, and its stock price has increased significantly.

76. Arctic Cat has announced that it has more WILDCAT branded products in its pipeline that it intends to introduce in the near future.

COUNT I:
TRADEMARK INFRINGEMENT: WILDCAT MARKS

77. Sabertooth incorporates by reference the allegations in paragraphs 1-76 above as if separately repeated here.

78. Arctic Cat's conduct as described herein constitutes trademark infringement in violation of 15 U.S.C. §1114(1). Arctic Cat's use of the WILDCAT marks infringe Sabertooth's trademark rights under the Lanham Act.

79. Arctic Cat acted deliberately and willfully in an attempt to trade upon the goodwill associated with Sabertooth's WILDCAT trademarks.

80. Arctic Cat's conduct is causing, and will continue to cause, irreparable harm to Sabertooth unless it is enjoined by this Court.

81. Sabertooth has suffered damages as a result of Arctic Cat's actions in an amount to be proven at trial.

COUNT II:
TRADEMARK INFRINGEMENT: CATHEAD LOGO

82. Sabertooth incorporates by reference the allegations in paragraphs 1-81 above as if separately repeated here.

83. Arctic Cat's conduct as described herein constitutes trademark infringement in violation of 15 U.S.C. §1114(1). Arctic Cat's use of its leaping cat logo infringes Sabertooth's trademark rights under the Lanham Act.

84. Arctic Cat acted deliberately and willfully in an attempt to trade upon the goodwill associated with Sabertooth's Cathead trademark.

85. Arctic Cat's conduct is causing, and will continue to cause, irreparable harm to Sabertooth unless it is enjoined by this Court.

86. Sabertooth has suffered damages as a result of Arctic Cat's actions in an amount to be proven at trial.

COUNT III:
TRADEMARK INFRINGEMENT: SABERTOOTH MARK

87. Sabertooth incorporates by reference the allegations in paragraphs 1-86 above as if separately repeated here.

88. Arctic Cat's conduct as described herein constitutes trademark infringement in violation of 15 U.S.C. §1114(1). Arctic Cat's use of its "Sabertooth Graphics Kit" infringes Sabertooth's trademark rights under the Lanham Act.

89. Arctic Cat acted deliberately and willfully in an attempt to trade upon the goodwill associated with Sabertooth's trademarks and trade name.

90. Arctic Cat's conduct is causing, and will continue to cause, irreparable harm to Sabertooth unless it is enjoined by this Court.

91. Sabertooth has suffered damages as a result of Arctic Cat's actions in an amount to be proven at trial.

COUNT IV:
VIOLATION OF MINNESOTA
DECEPTIVE TRADE PRACTICES ACT

92. Sabertooth incorporates by reference the allegations in paragraphs 1-91 above as if separately repeated here.

93. Arctic Cat's use of the WILDCAT marks is likely to cause confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services.

94. Arctic Cat's use of its leaping cat logo is likely to cause confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services.

95. Arctic Cat's use of the "Sabertooth Graphics Kit" is likely to cause confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services.

96. Arctic Cat's conduct is also likely to cause confusion or misunderstanding as to any affiliation, connection, or association between Sabertooth and Arctic Cat.

97. Arctic Cat's conduct as described herein constitutes deceptive trade practices in violation of the Minnesota Deceptive Trade Practices Act, Minn. Stat. §325D.44, et seq.

98. Arctic Cat has willfully engaged in the above-described trade practices, knowing them to be deceptive.

99. As a result of Arctic Cat's conduct, Sabertooth is entitled to an injunction and attorneys' fees under Minn. Stat. §325D.45.

COUNT V:
UNFAIR COMPETITION (COMMON LAW)

100. Sabertooth incorporates by reference the allegations in paragraphs 1-99 above as if separately repeated here.

101. Arctic Cat's conduct as described herein constitutes unfair competition in violation of the common law.

102. Sabertooth has been damaged as a result of Arctic Cat's unfair competition in an amount to be proven at trial.

JURY DEMAND

Sabertooth demands a jury trial for all issues triable to a jury.

PRAYER FOR RELIEF

WHEREFORE, Sabertooth seeks the following relief:

- A. That the Court dismiss Arctic Cat's Complaint with prejudice;
- B. That the Court preliminarily and permanently enjoin Arctic Cat, along with its agents, servants, employees, consultants, and those acting by, under, or in concert with any of them, from using in any manner the mark WILDCAT, WILDCAT 4, WILDCAT X, WILDCAT 1000X, or any other mark confusingly similar to Sabertooth's registered WILDCAT Marks, in connection with the advertisement, promotion, marketing, or sale of any power sport vehicle, including but not limited to motorcycles, snowmobiles, trikes, quads, Side by Sides, and all terrain vehicles, and in connection with clothing;
- C. That the Court preliminarily and permanently enjoin Arctic Cat, along with its agents, servants, employees, consultants, and those acting by, under, or in concert with any of them, from using in any manner the Arctic Cat leaping cat logo or any other mark confusingly similar to Sabertooth's cathead logo;
- D. That the Court preliminarily and permanently enjoin Arctic Cat, along with its agents, servants, employees, consultants, and those acting by, under, or in concert with

any of them, from using in any manner the mark SABERTOOTH with the “Sabertooth Graphics Kit,” or other products or accessories;

E. That Arctic Cat be directed at the conclusion of this action to deliver up to Sabertooth for subsequent destruction all labels, signs, prints, advertisements, promotional materials, packaging, packaging materials, and accessories bearing the WILDCAT mark, or marks that include WILDCAT, pursuant to 15 U.S.C. § 1118;

F. That Arctic Cat be directed at the conclusion of this action to deliver up to Sabertooth for subsequent destruction all labels, signs, prints, advertisements, promotional materials, packaging, packaging materials, and accessories bearing the SABERTOOTH mark, or marks that include SABERTOOTH, pursuant to 15 U.S.C. § 1118;

G. That Arctic Cat be directed at the conclusion of this action to deliver up to Sabertooth for subsequent destruction all labels, signs, prints, advertisements, promotional materials, packaging, packaging materials, and accessories bearing the leaping cat logo, or marks that include leaping cat logo, pursuant to 15 U.S.C. § 1118;

H. That Arctic Cat be required at the conclusion of this action to inform, in writing, all of the dealers, distributors and retailers that purchased Side by Sides, clothing, or related products bearing the WILDCAT mark, or a mark that includes WILDCAT, about Sabertooth’s claim of trademark infringement, and that Arctic Cat (1) be required to instruct such dealers, distributors and retailers to immediately cease all sales and advertising of any Arctic Cat products bearing the WILDCAT mark, or a mark that includes WILDCAT; (2) seek a recall of all Arctic Cat products bearing the

WILDCAT mark, or a mark that includes WILDCAT; and (3) provide Sabertooth with evidence of such communications;

I. That Arctic Cat be required at the conclusion of this action to inform, in writing, all of the dealers, distributors and retailers that purchased Side by Sides, clothing, or related products bearing the SABERTOOTH mark, or a mark that includes SABERTOOTH, about Sabertooth's claim of trademark infringement, and that Arctic Cat (1) be required to instruct such dealers, distributors and retailers to immediately cease all sales and advertising of any Arctic Cat products bearing the SABERTOOTH mark, or a mark that includes SABERTOOTH; (2) seek a recall of all Arctic Cat products bearing the SABERTOOTH mark, or a mark that includes SABERTOOTH; and (3) provide Sabertooth with evidence of such communications;

J. That Arctic Cat be required at the conclusion of this action to inform, in writing, all of the dealers, distributors and retailers that purchased Side by Sides, clothing, or related products bearing the leaping cat logo, or a mark that includes leaping cat logo, about Sabertooth's claim of trademark infringement, and that Arctic Cat (1) be required to instruct such dealers, distributors and retailers to immediately cease all sales and advertising of any Arctic Cat products bearing the leaping cat logo, or a mark that includes the leaping cat logo; (2) seek a recall of all Arctic Cat products bearing the leaping cat logo, or a mark that includes the leaping cat logo; and (3) provide Sabertooth with evidence of such communications;

K. That the Court order Arctic Cat to account for and pay over to Sabertooth all gains, profits, and advantages derived by it from its infringement and other unlawful acts;

L. That the Court award to Sabertooth compensatory damages, and that such damages be trebled in accordance with the law pursuant to 15 U.S.C. § 1117;

M. That the Court award to Sabertooth a sum sufficient to compensate Sabertooth for necessary corrective advertising;

N. That the Court order Arctic Cat to pay to Sabertooth its reasonable attorneys' fees, interest, disbursements, and all costs of this action;

O. That the Court issue a finding that Arctic Cat's use of its WILDCAT marks is likely to cause confusion with Sabertooth's registered WILDCAT marks and direct the Commissioner of Trademarks and the United States Patent and Trademark Office to refuse registration of Arctic Cat's application for WILDCAT with Sides by Sides, under Application No. 85308858, and with clothing, under Application No. 85979276;

P. That the Court issue a finding that Arctic Cat's use of its leaping cat logo is likely to cause confusion with Sabertooth's registered Cathead mark, and direct the Commissioner of Trademarks and the United States Patent and Trademark Office to refuse registration of Arctic Cat's Application No. 77295648; and

Q. That the Court award such other and further relief as the Court may deem just and equitable.

Respectfully submitted,

Dated: August 30, 2013

**GRAY, PLANT, MOOTY, MOOTY
& BENNETT, P.A.**

By s/Dean C. Eyler.

Dean C. Eyler (#267491)

Ashley Bennett Ewald (#0388301)

500 IDS Center

80 South Eighth Street

Minneapolis, Minnesota 55402

Telephone: (612) 632-3016

Facsimile: (612) 632-4016

dean.eyler@gpmlaw.com

**ATTORNEYS FOR DEFENDANTS &
COUNTERCLAIM PLAINTIFFS
SABERTOOTH MOTOR GROUP, LLC, &
SABERTOOTH MOTORCYCLES, LLC**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was electronically filed with the Court's Electronic Filing System and served on the attorneys of record for all parties in the above cause in accordance with the Federal Rules of Civil Procedure on August 30, 2013.

s/Dean C. Eyler

Dean C. Eyler

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